

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Changed-Circumstances  
Review of the Antidumping Duty Order on Gray Portland Cement  
and Clinker From Mexico – October 1, 2006, through December  
31, 2006.

### **Summary**

We have analyzed the comments and rebuttals of interested parties in the changed-circumstances review of the antidumping duty order on gray portland cement and clinker from Mexico. As a result of our analysis, we have made changes to the margin calculations and we have made changes pursuant to our verification findings which we address in our company-specific analysis memorandum. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this changed-circumstances review for which we received comments and rebuttals from interested parties.

1. Difference-in-Merchandise Adjustment
2. Level of Trade
3. Bag vs. Bulk
4. Profit-Sharing/Cost Test

### **Background**

On July 11, 2007, the Department of Commerce (the Department) published the preliminary results of the changed-circumstances review of the antidumping duty order on gray portland cement and clinker from Mexico. See Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico, 72 FR 37711 (July 11, 2007) (Preliminary Results). The changed-circumstances period of review (POR) is October 1, 2006, through December 31, 2006. We conducted a verification of information submitted by the respondent, Holcim Apasco, S.A. de C.V. (Apasco), from July 23 through 27, 2007.

We invited parties to comment on our Preliminary Results and our findings at verification. We received case briefs from Apasco and the Southern Tier Cement Committee (the petitioner) on September 7, 2007. We received rebuttal briefs from Apasco and the

petitioner on September 14, 2007. The petitioner states in its case brief that it agrees with our Preliminary Results. In its rebuttal brief Apasco reiterates the positions it raised in its case brief.

## **Discussion of the Issues**

### Comment 1: Difference-in-Merchandise Adjustment

Apasco argues that, in the Preliminary Results, the Department should have compared Apasco's U.S. sales to cement type CPO 30 RRS/BRA sold in the home market because of the similarity of chemical and physical characteristics between the products. Apasco contends that the apparent reason for the Department's use of a different match is that cement type CPO 30RRS/BRA did not pass the Department's difference-in-merchandise test. Citing Gray Portland Cement and Clinker from Mexico: Final Results of Administrative Review, 68 FR 54203, (September 16, 2003), and accompanying Issues and Decision Memorandum at Comment 10, Apasco argues that the Department's normal practice is to adjust the calculation to eliminate cost differences or distortions resulting from differences in plant efficiencies or plant cost structures and, by doing so, the Department will match U.S. sales to a cement type that is more similar in physical and chemical characteristics than the type it used in the Preliminary Results.

The petitioner comments that the Department disregarded sales of cement type CPO 30RRs/BRA correctly when calculating normal value because these sales did not pass the Department's difference-in-merchandise test.

Department's Position: Our normal practice is to disregard sales of products in the home market when a difference in cost for sales exceeds 20 percent of the total average cost of manufacture, on a model-specific basis, of the product exported to the United States. In this case, we have followed our normal practice by excluding sales that did not pass our 20-percent test. Therefore, given this result, we continue to find that it appropriate to compare Apasco's U.S. sales to its home-market sales of cement type CPO 40 R. In addition, the record indicates that Apasco did not produce cement type CPO 30RRs/BRA at the same plant at which it produced the cement it sold to the United States. Thus, we find that Apasco has not made any compelling arguments to warrant the alteration of difference-in-merchandise calculation for the final results.

### Comment 2: Level of Trade

Apasco argues that the Department erred when it found only one level of trade in the home market in the Preliminary Results. According to Apasco, the record demonstrates that there are two levels of trade at which Apasco sells in the home market. Apasco requests that the Department make a level-of-trade adjustment, given that there is only one level of trade in the U.S. market.

The petitioner argues that the Department's finding that there were no significant differences in selling functions between the different channels of distribution in the home market is correct and there is no basis upon which to make a level-of-trade adjustment.

Department's Position: In our Preliminary Results, we found only one level of trade in

the home-market. After reviewing the record, we find that, during the POR, Apasco sold the foreign like product to two types of customers in the home market. Specifically, Apasco reported that it sold to distributors/resellers and end-users (construction companies, transformers, government end-users, affiliates, and employees<sup>1</sup>)) through two channels of distribution in the home market. See Apasco's April 25, 2007, supplemental questionnaire response at Exhibit S-11.

After reviewing the home-market selling functions reported by Apasco, we find that the two channels of distribution differed with respect to selling activities such as after-sales service, customer approval, market research, sales/marketing support, sales promotion, distributor/dealer training, packing, engineering services, strategic/economic planning, personnel training, and advertising. Based on these differences, we find that Apasco sold the foreign like product in the home market at two different levels of trade. As a result of this analysis, we have altered our calculations to reflect this change in our designation of Apasco's home-market level of trade. Thus, we have changed our initial position with regard to this issue.

With regard to Apasco's request for a level-of-trade adjustment, we find that the U.S. level of trade (export-price sales) is comparable to one level of trade in the home market and we are able to make comparisons without resorting to a comparison at the other level of trade in the home market. Thus, it is not necessary to make a level-of-trade adjustment in this case. As a result, we have not made a level-of-trade adjustment for the final results. For further details, please see Final Analysis Memorandum dated October 25, 2007.

#### Comment 3: Bag vs. Bulk

Apasco argues that, if the Department agrees with its argument concerning the calculation of the difference-in-merchandise adjustment, then it should compare all of Apasco's U.S. bulk sales to bulk sales made in the home market. According to Apasco, sales of cement type CPO 30RRS/BRA were made in both bagged and bulked forms in the home market while sales to the United States were made in bulk. Apasco argues that the basic principal of the antidumping law and practice is that a comparison between products sold in the home market and those sold in the U.S. market should be as close as possible in order to ensure a fair comparison.

The petitioner argues that the issue of matching bulk and bagged cement is irrelevant in this review because the Department compared bulk sales made in the United States to bulk sales made in the home market.

Department's Position: As we have not altered our matching methodology from the Preliminary Results, this issue is moot. Therefore, we find no reason to consider this issue for purposes of the final dumping calculation.

#### Comment 4: Profit-Sharing/Cost Test

Apasco contends that its calculation of its direct labor expense did not include an amount

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<sup>1</sup> Apasco did not report sales to employees during the POR. Therefore, these sales are not included in our level-of-trade analysis.

for employee profit-sharing as part of labor cost. According to Apasco, the Department has not made an express determination regarding this issue but, if it decides to re-consider it for the final results, Apasco argues that it believes that its treatment of employee profit is correct for several reasons. Specifically, Apasco argues that 19 CFR 353.51<sup>2</sup> specifically excludes profit from the cost of production (COP). Apasco asserts that, under 19 CFR 353.51, financial accounting does not classify profit, which by definition is the only basis for determining profit-sharing, as a cost item for inclusion in the cost of manufacture (COM) or COP.

While the Department has included amounts for employee profit-sharing as a labor cost in the COM or COP in other proceedings involving a Mexican producer and exporter, Apasco asserts that those decisions did not address the issue of whether this practice was appropriate in the context of calculating a cost-test benchmark used to determine whether there have been sales at prices below the COP. According to Apasco, there is no logical basis for including profit-sharing expense in labor cost for purposes of establishing a benchmark used to determine whether sales were made below the COP. Apasco argues that a sale below the COP is by definition a sale with no profit and that including a profit-sharing expense amount in the COP used to determine whether there is a sale below the COP (i.e., a profitless sale) yields a distorted result.

The petitioner argues that it is irrelevant whether profit-sharing expenses should be included in the determination of sales below cost because the Department found no sales below cost in the instant review.

Department's Position: We have examined the record and have determined that we should include these expenses in the numerator of the general and administrative (G&A) expense ratio calculations. It is the Department's established practice to include such expenses in the calculation of COP and constructed value. As we stated in the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 65 FR 5554, 5581 (February 4, 2000), "{B}ecause employee profit sharing is a cost of labor and it is an expense recognized with the {period of investigation}, it should be included in the reported cost..." In the instant case, we find that it is appropriate to include Apasco's profit-sharing expense in the G&A expenses because it is an additional remuneration over and above the wages and salaries normally paid to employees. In other words, it is an additional expense Apasco incurred that benefits its employees for their contribution to the company. Therefore, for the final results, we have included an amount for employee profit-sharing in the numerator of the calculation of G&A.

## Recommendation

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<sup>2</sup> Apasco cites the Department's regulations in effect until 1997 but does not refer to the current regulations at 19 CFR 351 (2006).

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the changed-circumstances review and the final dumping margin for Apasco in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date